

# P01000053320

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AVISENA, INC.**

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**FIFTH AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF**

**AVISENA, INC.**

Avisena, Inc. (the "Corporation"), a corporation organized and existing under the Florida Business Corporation Act (the "Business Corporation Act"),

DOES HEREBY CERTIFY:

FIRST: That the Corporation was originally incorporated in Florida under the name Avisena, Inc., the date of its filing of its original Articles of Incorporation with the Department of State of the State of Florida was May 30, 2001, the date of its filing of its Amended and Restated Articles of Incorporation was January 9, 2004, the date of its filing of its Second Amended and Restated Articles of Incorporation was February 18, 2005, the date of its filing of its Third Amended and Restated Articles of Incorporation was March 15, 2007 and the date of its filing of its Fourth Amended and Restated Articles of Incorporation was September 2, 2008.

SECOND: The Fourth Amended and Restated Articles of Incorporation of the Corporation shall be amended and restated in their entirety as follows:

**ARTICLE I**

The name of the Corporation is Avisena, Inc.

**ARTICLE II**

The principal office of the Corporation is 6100 Blue Lagoon Drive, Suite 450, Miami, FL 33126.

**ARTICLE III**

The registered office of the Corporation is to be located at 6100 Blue Lagoon Drive, Suite 450, Miami, FL 33126. The name of its registered agent in the State of Florida is Michael Maseda.

**ARTICLE IV**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Business Corporation Act.

**ARTICLE V**

A. Classes of Stock. The Corporation is authorized to issue two (2) classes of stock to be designated, respectively, "Common Stock," and "Preferred Stock." The total number of

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shares of capital stock which the Corporation is authorized to issue is 1,293,110,785 shares, of which 746,090,785 shares shall be Common Stock and 547,020,000 shares shall be Preferred Stock. All shares of Common Stock and Preferred Stock shall have a par value of \$0.0001 per share. The Preferred Stock may be issued from time to time, in one or more classes or series, the shares of each class or series to have such preferences, limitations and relative rights as stated herein. The Corporation has seven (7) series of Preferred Stock: Series A Convertible Preferred Stock ("Series A Stock"), Series B Convertible Preferred Stock ("Series B Stock"), Series C Convertible Preferred Stock ("Series C Stock"), Series D Convertible Preferred Stock ("Series D Stock"), Series E Convertible Preferred Stock ("Series E Stock"), Series F Convertible Preferred Stock ("Series F Stock") and Series G Convertible Preferred Stock ("Series G Stock"); the Series B Stock and the Series C Stock are sometimes herein collectively referred to as the "Secondary Preferred Stock", and the Series G Stock, Series F Stock, Series E Stock, the Series D Stock, the Secondary Preferred Stock and Series A Stock are sometimes herein collectively referred to as the "Preferred Stock", which series shall have the rights, preferences, privileges and restrictions set forth herein.

B. Rights, Preferences, Privileges and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on (i) the Series A Stock, which series shall consist of 720,000 shares, (ii) the Series B Stock, which series shall consist of 40,000,000 shares, (iii) the Series C Stock, which series shall consist of 70,000,000 shares, (iv) the Series D Stock, which series shall consist of 100,500,000 shares, (v) the Series E Stock, which series shall consist of 50,800,000 shares, (vi) the Series F Stock, which series shall consist of 64,000,000 shares, and (vii) the Series G Stock, which series shall consist of 221,000,000 shares are as follows:

1. Dividend Provisions.

a. The holders of shares of Series G Stock shall be entitled to receive, prior and in preference to the declaration or payment of any dividend or distribution to the holders of Series F Stock, Series E Stock, Series D Stock, Secondary Preferred Stock or Series A Stock, Common Stock or any other shares or securities of the Corporation ranking junior to Series G Stock with respect to the payment of dividends or the distribution of assets on liquidation, in addition to and not in limitation of the dividend rights provided in subsection 1(b) below, dividends which shall accrue cumulatively on each share of Series G Stock at the rate and in the manner prescribed below and payable when, as and if any dividend or distribution is declared by the Board of Directors. The holders of shares of Series E Stock and the holders of shares of Series F Stock shall be entitled to receive, following the declaration and payment of such dividend or distribution to the Series G Stock but prior and in preference to the declaration or payment of any dividend or distribution to the holders of Series D Stock, Secondary Preferred Stock or Series A Stock, Common Stock or any other shares or securities of the Corporation ranking junior to such Series E Stock and Series F Stock with respect to the payment of dividends or the distribution of assets on liquidation, in addition to and not in limitation of the dividend rights provided in subsection 1(b) below, dividends which shall accrue cumulatively on each share of Series E Stock and Series F Stock at the rate and in the manner prescribed below and payable when, as and if any dividend or distribution is declared by the Board of Directors. The holders of Series D Stock shall be entitled to receive, following the declaration and payment of such dividend or distribution to the Series G Stock, Series F Stock and Series E Stock but

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prior to and in preference to the declaration or payment of any dividend or distribution to the holders of Secondary Preferred Stock or Junior Securities (as defined below), in addition to and not in limitation of the dividend rights provided in subsection 1(b) below, dividends which shall accrue cumulatively on each share of Series D Stock at the rate and in the manner prescribed below and payable when, as and if any dividend or distribution is declared by the Board of Directors. The holders of shares of Secondary Preferred Stock shall be entitled to receive, following the declaration and payment of such dividend or distribution to the Series G Stock, Series F Stock, Series E Stock and Series D Stock but prior to and in preference to the declaration or payment of any dividend or distribution to the holders of Junior Securities, in addition to and not in limitation of the dividend rights provided in subsection 1(b) below, dividends which shall accrue cumulatively on each share of Secondary Preferred Stock at the rate and in the manner prescribed below and payable when, as and if any dividend or distribution is declared by the Board of Directors. The term "Junior Securities" means Series A Stock, Common Stock or any other shares or securities of the Corporation ranking junior to Series B Stock with respect to the payment of dividends or the distribution of assets on liquidation.

(1) Dividends shall accrue on each share of Series G Stock at a rate per annum of 4% of the Original Series G Stock Issue Price (as defined below, as adjusted for stock splits, stock dividends, combinations, recapitalizations and similar events) from the date of issuance of the applicable Series G Stock, on each share of Series F Stock at a rate per annum of 4% of the Original Series F Stock Issue Price (as defined below, as adjusted for stock splits, stock dividends, combinations, recapitalizations and similar events) from and including the Series F Filing Date (as defined below) and on each share of Series E Stock, Series D Stock and Secondary Preferred Stock at a rate per annum of 4% of the Original Issue Price (as defined below) of such series of Preferred Stock (as adjusted for stock splits, stock dividends, combinations, recapitalizations and similar events) from and including March 15, 2007, in all cases compounded annually on each December 31. Such dividends shall be payable on the respective series of Preferred Stock in cash when, as and if any such dividend is declared by the Board of Directors. In the event of any liquidation, dissolution or winding up of the Corporation or the redemption of a share of Preferred Stock or the bankruptcy of the Corporation, all accrued and unpaid dividends on a share of Series F Stock, Series E Stock, Series D Stock or Secondary Preferred Stock shall be added to the liquidation preference of such share on the payment date under subsection 2(a) below, or on the date of redemption of such share or upon the bankruptcy of the Corporation, as the case may be, accrued cumulatively to but excluding such payment date or redemption date or bankruptcy on a daily basis. "Series F Filing Date" means September 2, 2008.

(2) No dividend or other distribution (other than a dividend or distribution payable solely in Common Stock) shall be paid on or set apart for payment on the Common Stock of the Corporation or other Junior Securities nor shall any payment be made on account of the purchase, redemption or retirement of any Common Stock of the Corporation or other Junior Securities, unless all accrued and unpaid dividends on the Preferred Stock have been or contemporaneously are paid in cash or set apart for payment in accordance herewith. A conversion of a convertible security which by its terms is convertible into Common Stock by the holder thereof shall not be deemed a purchase, redemption or retirement of the security so converted for purposes of this subsection 1(a). The Series E Stock and the Series F Stock shall rank on a parity with each other with respect to the payment of dividends and no dividend shall

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be declared or paid on Series E Stock or Series F Stock unless there shall have been declared and paid on all shares of then outstanding Series E Stock and Series F Stock pro rata equivalent dividends based upon the full dividends accrued on all outstanding Series E Stock and Series F Stock as if the Series E Stock and the Series F Stock are of the same class. Subject to the rights of redemption applicable to the Series C Stock, the Series B Stock and the Series C Stock shall rank on a parity with each other with respect to the payment of dividends and no dividend shall be declared or paid on Series B Stock or Series C Stock unless there shall have been declared and paid on all shares of then outstanding Series B Stock and Series C Stock pro rata equivalent dividends based upon the full dividends accrued on all outstanding Series B Stock and Series C Stock as if the Series B Stock and the Series C Stock are of the same class.

b. In addition to and not in limitation of the dividends provided for in subsection 1(a), the holders of Preferred Stock, including the Series A Stock, shall be entitled to receive dividends and other distributions equivalent to those declared or paid in respect of Common Stock (or any other Junior Securities), determined as if the Preferred Stock had been converted into Common Stock at the then effective Conversion Price (or, in the case of dividends or distributions on Junior Securities other than Common Stock, determined on a comparable basis), and payable when, as and if declared by the Board of Directors on such Common Stock (or other Junior Securities).

## 2. Liquidation Preference.

a. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidation Event"), the holders of Series G Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Series F Stock, Series E Stock, Series D Stock, Secondary Preferred Stock, Series A Stock, Common Stock or any other Junior Securities by reason of their ownership thereof, an amount per share equal to \$0.018106 for each share of Series G Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series G Stock) (the "Original Series G Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series G Stock as of the date of such event (together, the "Series G Stock Liquidation Preference"). If, upon the occurrence of a Liquidation Event, the assets and funds to be distributed among the holders of the Series G Stock shall be insufficient to permit the payment to such holders of the full Series G Stock Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed, ratably among the holders of the Series G Stock in proportion to the aggregate Series G Stock Liquidation Preference that would otherwise be payable to such holders.

b. In the event of a Liquidation Event, following the completion of the distributions required by paragraph (a) of this Section (B)2, if assets or surplus funds remain in the Corporation, the holders of Series E Stock and the holders of Series F Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Series D Stock, Secondary Preferred Stock, Series A Stock, Common Stock or any other Junior Securities by reason of their ownership thereof, (i) in the case of the Series E Stock, an amount per share equal to \$0.049310 for each share of Series E Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and

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similar transactions with respect to the Series E Stock) (the "Original Series E Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series E Stock as of the date of such event (together, the "Series E Stock Liquidation Preference") and (ii) in the case of the Series F Stock, an amount per share equal to \$0.0632486 for each share of Series F Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series F Stock) (the "Original Series F Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series F Stock as of the date of such event (together, the "Series F Stock Liquidation Preference"). If, upon the occurrence of a Liquidation Event, the assets and funds to be distributed among the holders of the Series E Stock and Series F Stock shall be insufficient to permit the payment to such holders of the full Series E Stock Liquidation Preference and Series F Stock Liquidation Preference (as applicable), then the entire assets and funds of the Corporation legally available for distribution shall be distributed, ratably among the holders of the Series E Stock and Series F Stock in proportion to the aggregate Series E Stock Liquidation Preference and Series F Stock Liquidation Preference that would otherwise be payable to such holders.

c. In the event of a Liquidation Event, following the completion of the distributions required by paragraphs (a) and (b) of this Section (B)2, if assets or surplus funds remain in the Corporation, the holders of Series D Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Secondary Preferred Stock, Series A Stock, Common Stock or any other Junior Securities by reason of their ownership thereof, an amount per share equal to \$0.019149 for each share of Series D Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series D Stock) (the "Original Series D Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series D Stock as of the date of such event (together, the "Series D Stock Liquidation Preference"). If, upon the occurrence of a Liquidation Event, the assets and funds to be distributed among the holders of the Series D Stock shall be insufficient to permit the payment to such holders of the full Series D Stock Liquidation Preference, then the entire assets and funds of the Corporation legally available for distribution shall be distributed, ratably among the holders of the Series D Stock in proportion to the aggregate Series D Stock Liquidation Preference that would otherwise be payable to such holders.

d. In the event of a Liquidation Event, following completion of the distributions required by paragraphs (a), (b) and (c) of this Section (B)2, if assets or surplus funds remain in the Corporation, the holders of Secondary Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of such assets or surplus funds to the holders of Series A Stock, Common Stock or any other Junior Securities by reason of their ownership thereof, (i) in the case of Series B Stock, \$0.06 for each share of Series B Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series B Stock) (the "Original Series B Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series B Stock as of the date of such event (together, the "Series B Stock Liquidation Preference") and (ii) in the case of Series C Stock, \$0.07 for each share of Series C Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series C Stock) (the "Original Series C Stock Issue Price") plus all accrued or declared but unpaid dividends on such Series C Stock as of the date of such event (together, the "Series C Stock Liquidation").

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**Preference**"). If, upon the occurrence of a Liquidation Event, the assets and funds to be distributed among the holders of the Secondary Preferred Stock shall be insufficient to permit the payment to such holders of the full Series B Stock Liquidation Preference and Series C Stock Liquidation Preference (as applicable), then the entire assets and funds of the Corporation legally available for distribution shall be distributed, ratably among the holders of the Secondary Preferred Stock in proportion to the aggregate Series B Stock Liquidation Preference and Series C Stock Liquidation Preference that would otherwise be payable to such holders.

e. In the event of a Liquidation Event, following completion of the distributions required by paragraphs (a), (b), (c) and (d) of this Section (B)2 and any further distributions required to be made to holders of other Junior Securities (other than Series A Stock), if any, if assets or surplus funds remain in the Corporation, the holders of the Series A Stock shall be entitled to receive prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to \$0.306944 for each share of Series A Stock then held by them (as adjusted for any stock splits, stock dividends, stock combinations and similar transactions with respect to the Series A Stock) (the "**Original Series A Stock Issue Price**") plus all accrued or declared but unpaid dividends on such Series A Stock as of the date of such event (together, the "**Series A Stock Liquidation Preference**"). As used in these Articles, the "**Original Issue Price**" of a series of Preferred Stock shall mean either the Original Series F Stock Issue Price, the Original Series E Stock Issue Price, the Original Series D Stock Issue Price, the Original Series C Stock Issue Price, the Original Series B Stock Issue Price or the Original Series A Stock Issue price, as applicable.

f. In the event of a Liquidation Event, following completion of the distributions required by paragraphs (a) through (e) of this Section (B)2, if assets or surplus funds remain in the Corporation, the holders of the Series G Stock, holders of the Series F Stock, holders of the Series E Stock, holders of the Series D Stock, holders of the Secondary Preferred Stock, holders of the Series A Stock and the holders of the Common Stock shall share ratably in all remaining assets of the Corporation, based on the number of shares of Common Stock then outstanding and the number of shares of Common Stock into which the Preferred Stock is then convertible.

g. The aggregate consideration per share to be received by the holders of each series of Secondary Preferred Stock pursuant to Sections (B)2(d) and (B)2(f) upon a Liquidation Event shall not exceed five (5) times the Original Series C Stock Issue Price and the Original Series B Stock Issue Price, respectively. The aggregate consideration per share to be received by the holders of Series A Stock pursuant to Sections (B)2(e) and (B)2(f) upon a Liquidation Event shall not exceed one (1) time the Original Series A Stock Issue Price. The Corporation shall provide the holders of Series A Stock, the holders of Series B Stock and the holders of Series C Stock at least thirty (30) days prior written notice of any Liquidation Event, setting forth in reasonable detail the aggregate distributions expected to be made in connection with such Liquidation Event and the distributions expected to be made to each class and series of the Corporation's capital stock on a per share basis, and the holders of Series A Stock, Series B Stock and/or Series C Stock shall have the right to convert such shares pursuant to the provisions of Section (B)4 of this Article V at any time prior to such Liquidation Event.

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h. Unless waived by the holders of a majority of the Series G Stock voting together as a single class on an as-converted basis, the occurrence of any of the following events shall be deemed to be a Liquidation Event:

(1) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which either (A) a majority of the outstanding shares of capital stock are exchanged for other securities or consideration or (B) the Corporation shall not be the continuing or surviving entity of such consolidation, merger or reorganization;

(2) any transaction or series of related transactions occurring after the date hereof (other than any sale(s) of Series G Stock) as a result of which securities representing in excess of 50% of the Corporation's voting power are transferred and/or issued; or

(3) any sale or transfer (including, without limitation, by merger, consolidation or reorganization) in any transaction or series of related transactions of all or substantially all of the assets of the Corporation or all its subsidiaries taken as a whole.

i. In the event of a Liquidation Event, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities received as consideration shall be valued as follows:

(1) Securities not subject to investment letter or other similar restrictions on free marketability covered by (2) below:

(a) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing;

(b) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three (3) days prior to the closing; and

(c) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(2) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (1)(a), (b) or (c) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

j. The Corporation shall mail to each holder of Series G Stock, Series F Stock, Series E Stock, Series D Stock and Secondary Preferred Stock, at least twenty (20) days (or such longer period of time as may be required by the Business Corporation Act) prior to a Liquidation Event, a notice setting forth the date on which such Liquidation Event is expected to

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become effective and the type and amount of anticipated proceeds per share of Common Stock and each series of Preferred Stock to be distributed with respect thereto.

k. In the event that, immediately prior to the closing of any of the transactions described in subsection 2(h) the distributions required by subsections 2(a) through 2(e) have not been made in cash, the Corporation shall forthwith either:

(1) cause such closing to be postponed until such time as such cash distributions have been made, or

(2) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series G Stock, Series F Stock, Series E Stock, Series D Stock and Secondary Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection (B)4(j) hereof.

3. Redemption Rights.

a. Notice of Election.

(1) Series G Stock. At any time, and from time to time, after January 10, 2014, the holders of a majority of the outstanding Series G Stock shall have the right, by the giving of written notice to the Corporation (a "Series G Election Notice"), to require that the Corporation offer to redeem all outstanding shares of Series G Stock (or any portion thereof that the offerees may elect) (the "Series G Redemption Stock") at a per share price (the "Series G Redemption Price") equal to the greater of (i) the Series G Stock Liquidation Preference, or (ii) the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation. The Series G Election Notice shall specify the date the redemption is to commence, which shall be thirty (30) days after the date of the Series G Election Notice. A Series G Election Notice may be given prior to January 10, 2014.

(2) Series F Stock. At any time, and from time to time, after the later to occur of (x) January 10, 2014 and (y) the payment in full by the Corporation of the Series G Redemption Price with respect to all issued and outstanding shares of Series G Stock, the holders of a majority of the outstanding Series F Stock shall have the right, by the giving of written notice to the Corporation (a "Series F Election Notice"), to require that the Corporation offer to redeem all outstanding shares of Series F Stock (or any portion thereof that the offerees may elect) (the "Series F Redemption Stock") at a per share price (the "Series F Redemption Price") equal to the greater of (i) the Series F Stock Liquidation Preference, or (ii) the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation. The Series F Election Notice shall specify the date the redemption is to commence, which shall be thirty (30) days after the date of the Series F Election Notice.

(3) Series E Stock. At any time, and from time to time, after the later to occur of (x) January 10, 2014 and (y) the payment in full by the Corporation of the Series F Redemption Price with respect to all issued and outstanding shares of Series F Stock, the holders of a majority of the outstanding Series E Stock shall have the right, by the giving of written notice to the Corporation (a "Series E Election Notice"), to require that the Corporation

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offer to redeem all outstanding shares of Series E Stock (or any portion thereof that the offerees may elect) (the "Series E Redemption Stock") at a per share price (the "Series E Redemption Price") equal to the greater of (i) the Series E Stock Liquidation Preference, or (ii) the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation. The Series E Election Notice shall specify the date the redemption is to commence, which shall be thirty (30) days after the date of the Series E Election Notice.

(4) Series C Stock and Series D Stock. At any time, and from time to time, after the later to occur of (x) January 10, 2014 and (y) the payment in full by the Corporation of the Series E Redemption Price with respect to all issued and outstanding shares of Series E Stock, the holders of a majority of the outstanding Series C Stock shall have the right, by the giving of written notice to the Corporation (such notice, a "Series C Election Notice"; a Series G Notice, Series F Election Notice, a Series E Election Notice and a Series C Election Notice are sometimes herein referred to as an "Election Notice"), to require that the Corporation offer to redeem all outstanding shares of Series D Stock and Series C Stock (or any portion thereof that the offerees may elect) (the "Series C and D Redemption Stock"; the Series G Redemption Stock, Series F Redemption Stock, the Series E Redemption Stock and the Series C and D Redemption Stock are sometimes herein referred to as the "Redemption Stock") at a per share price (the "Series C and D Redemption Price"; the Series G Redemption Price, the Series F Redemption Price, the Series E Redemption Price and the Series C and D Redemption Price are sometimes herein referred to as the "Redemption Price") equal to the greater of (i) the Series D Stock Liquidation Preference or Series C Stock Liquidation Preference, as applicable, or (ii) the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation. The Series C Election Notice shall specify the date the redemption is to commence, which shall be thirty (30) days after the date of the Series C Election Notice.

b. As promptly as practicable after the Corporation receives an Election Notice (and in any event within ten (10) days), the Corporation shall mail written notice (the "Company Notice"), first class postage prepaid, to each holder of record (as of the close of business on the business day preceding the day on which the Corporation received such Election Notice) of Series G Stock, Series F Stock, Series E Stock or Series D Stock and Series C Stock, as the case may be, at the address last shown on the records of the Corporation for such holder or given by the holder to the Corporation for the purpose of notice, notifying such holder of the option of such holder to have its Series G Stock, Series F Stock, Series E Stock, Series D Stock or Series C Stock, as the case may be, redeemed, specifying the number of shares which such holder may require be redeemed, the Redemption Price, as the case may be, the date on which such redemption shall take place (the "Redemption Date"), and the place at which payment may be obtained for redeemed shares and such other information as the Corporation may deem advisable to provide regarding the option of such holder to have its Series G Stock, Series F Stock, Series E Stock, Series D Stock or Series C Stock, as the case may be, redeemed. In the event the Corporation is lawfully able to redeem only part of the Redemption Stock of a particular Series of Preferred Stock requested to be redeemed, then the holders of shares of Redemption Stock of such particular Series of Preferred Stock requested to be redeemed shall be entitled to have their shares redeemed ratably, in proportion to the total Redemption Price payable to each such holder and the Corporation shall purchase the remaining Redemption Stock requested to be redeemed on the first day it may lawfully do so unless the holder thereof otherwise determines, not to have such shares redeemed.

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c. Within ten (10) days after receipt of a Company Notice, each holder of Redemption Stock desiring to have all or any portion of such shares redeemed shall mail (first class postage prepaid) or deliver personally or by telecopier to the Corporation at its then principal office, a response specifying whether and to what extent such holder elects to have any shares redeemed (the "Response"). Any holder of Redemption Stock that fails to provide its Response in a timely manner or that elects not to have its shares redeemed shall not be eligible to have such shares redeemed unless and until a subsequent Election Notice is delivered.

d. Three (3) days prior to each Redemption Date, the Corporation shall deposit the Redemption Price for all outstanding shares of Redemption Stock designated for redemption on such Redemption Date and not yet redeemed or converted, with a bank or trust company having aggregate capital and surplus in excess of \$500,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed. Simultaneously, the Corporation shall deposit irrevocable instructions and authority with such bank or trust company to pay, on and after the applicable Redemption Date, the Redemption Price of the Redemption Stock so designated for redemption to the holders thereof upon surrender of their certificates. The balance of any monies deposited by the Corporation pursuant to this paragraph remaining unclaimed at the expiration of six (6) months following the applicable Redemption Date shall thereafter be returned to the Corporation, provided that the shareholder to whom such monies would be payable hereunder shall be entitled to receive such monies upon proof of ownership of the Redemption Stock.

e. The shares of Series A Stock and Series B Stock are not redeemable. No shares of Preferred Stock shall be redeemable at the option of the Corporation.

4. Conversion. The holders of Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Right to Convert.

(i) Each share of Series A Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series A Stock by the Series A Conversion Price (as defined below) at the time in effect for such share. The Series A Stock shall have a Conversion Value of \$0.306944 per share. The initial "Series A Conversion Price" per share for Series A Stock shall be \$0.306944, and shall be subject to adjustment as set forth below.

(ii) Each share of Series B Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series B Stock by the Series B Conversion Price (as defined below) at the time in effect for such share. The Series B Stock shall have a Conversion Value of \$0.06 per share. The initial "Series B Conversion Price" per share for Series B Stock shall be \$0.06, and shall be subject to adjustment as set forth below.

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(iii) Each share of Series C Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series C Stock by the Series C Conversion Price (as defined below) at the time in effect for such share. The Series C Stock shall have a Conversion Value of \$0.07 per share. The initial "Series C Conversion Price" per share for Series C Stock shall be \$0.07, and shall be subject to adjustment as set forth below.

(iv) Each share of Series D Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, in such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series D Stock by the Series D Conversion Price (as defined below) at the time in effect for such share. The Series D Stock shall have a Conversion Value of \$0.019149 per share. The initial "Series D Conversion Price" per share for Series D Stock shall be \$0.019149, and shall be subject to adjustment as set forth below.

(v) Each share of Series E Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, in such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series E Stock by the Series E Conversion Price (as defined below) at the time in effect for such share. The Series E Stock shall have a Conversion Value of \$0.049310 per share. The initial "Series E Conversion Price" per share for Series E Stock shall be \$0.049310, and shall be subject to adjustment as set forth below.

(vi) Each share of Series F Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, in such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series F Stock by the Series F Conversion Price (as defined below) at the time in effect for such share. The Series F Stock shall have a Conversion Value of \$0.0632486 per share. The initial "Series F Conversion Price" per share for Series F Stock shall be \$0.0632486, and shall be subject to adjustment as set forth below.

(vii) Each share of Series G Stock shall be convertible at the option of the holder thereof at the office of the Corporation or any transfer agent for the Preferred Stock, in such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the "Conversion Value" (as set forth below) of the Series G Stock by the Series G Conversion Price (as defined below) at the time in effect for such share. The Series G Stock shall have a Conversion Value of \$0.018106 per share. The initial "Series G Conversion Price" per share for Series G Stock shall be \$0.018106, and shall be subject to adjustment as set forth below.

(viii) Notwithstanding the provisions of subparagraphs (i) – (vii) above, the Conversion Price in effect from time to time for, respectively, the Series A Stock,

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Series B Stock, Series C Stock, Series D Stock, Series E Stock, Series F Stock and Series G Stock shall be subject to adjustment as provided hereinafter.

(ix) Upon conversion of any share of capital stock pursuant to this Section (B)4, all accrued or declared but unpaid dividends thereon shall convert into a debt obligation of the Corporation, which shall accrue interest at 4% per annum, compounded annually on each December 31, and shall be payable upon the earlier of (x) the date that the dividends to which such obligation relates become payable (subject to the priorities and preferences set forth in Sections (B)1 or (B)2, as the case may be, as if such obligation was an accrued or declared but unpaid dividend with respect to such share), and (y) upon the occurrence of the first underwritten public offering of the Corporation's securities made or required to be made pursuant to a registration statement in accordance with the Securities Act of 1933, as amended (subject to such priorities and preferences set forth in Section (B)1, as if such obligation was an accrued or declared but unpaid dividend with respect to such share).

b. Automatic Conversion. Upon the vote of the holders of a majority of the Series G Stock, each share of Series G Stock, Series F Stock, Series E Stock, Series D Stock, Series C Stock, Series B Stock and Series A Stock, shall automatically be converted into fully paid and nonassessable shares of Common Stock at the applicable conversion price then in effect.

c. Mechanics of Conversion.

(1) Other than with respect to conversions effected under the terms of subsections (B)4(b) above or (B)4(o) below, each conversion of shares of capital stock of the Corporation into another class of capital stock of the Corporation shall be effected by the surrender of the certificate(s) evidencing the shares of the class of stock to be converted (the "Converting Shares") at the principal office of the Corporation (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of such class of capital stock) at any time during its usual business hours, together with written notice by the holder of such Converting Shares, (i) stating that the holder desires to convert the Converting Shares or a specified number of such Converting Shares, evidenced by such certificate(s), into shares of the class into which such shares may be converted (the "Converted Shares"), and (ii) giving the name(s) (with addresses) and denominations in which the certificate(s) evidencing the Converted Shares shall be issued, and instructions for the delivery thereof; provided, however, that if the Converted Shares are to be issued in the name of a person other than the registered holder of the Converting Shares, the holder of the Converting Shares shall provide with such notice an opinion of counsel reasonably satisfactory to the Corporation to the effect that such transfer is exempt from the registration requirements of the Securities Act and applicable state securities laws; and provided, further, that the holder of the Converting Shares shall pay all transfer taxes payable with respect to such transfer. Upon receipt of the notice described in the first sentence of this subsection (B)4(c)(1), together with the certificate(s) evidencing the Converting Shares, the Corporation shall be obligated to, and shall, issue and deliver in accordance with such instructions the certificate(s) evidencing the Converted Shares issuable upon such conversion and a certificate (which shall contain such legends, if any, as were set forth on the surrendered certificate(s)) representing any shares which were represented by the certificate(s) surrendered to the Corporation in connection with such conversion but which were

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not Converting Shares and, therefore, were not converted. Such conversion, to the extent permitted by law and to the extent it is an optional conversion under subsection (B)4(a) above, shall be deemed to have been effected as of the close of business on the date on which such certificate(s) shall have been surrendered and such written notice shall have been received by the Corporation, and at such time the rights of the holder of such Converting Shares as such holder shall cease, and the person(s) in whose name or names any certificate(s) evidencing the Converted Shares are to be issued upon such conversion shall be deemed to have become the holder(s) of record of the Converted Shares. If the conversion is a mandatory conversion as described in subsection (B)4(b) above, such conversion shall be deemed to have been effected as of the date of the approval of the conversion automatically and without any further action on the part of such holder or the Corporation.

(2) Upon the issuance of the Converted Shares in accordance with this section (B)4, such shares shall be deemed to be duly authorized, validly issued, fully paid and nonassessable.

(3) If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion as permitted herein, be conditioned upon the closing of such underwritten sale of securities pursuant to such offering in which event the person(s) entitled to receive the shares issuable upon such conversion shall not be deemed to have converted such shares until immediately prior to the closing of such sale of securities.

d. Adjustments to Conversion Price of Series G Stock, Series F Stock, Series E Stock, Series D Stock and Secondary Preferred Stock for Certain Diluting Issues.

(1) Special Definitions. For purposes of this Section (B)4, the following definitions shall apply:

(a) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or "Convertible Securities" (as defined below).

(b) "Convertible Securities" shall mean any evidence of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock.

(c) "Additional Common Stock" shall mean all Common Stock issued (or, pursuant to subsection (B)4(d)(3), deemed to be issued) by the Corporation after the date hereof, other than Common Stock issued or issuable:

(A) upon conversion of the Preferred Stock;

(B) to officers, directors or employees of, or consultants to, the Corporation pursuant to restricted stock issuances, stock grants, stock options or similar employee stock incentives outstanding on the date hereof, or issued or granted after the date hereof, on terms approved by the Board of Directors of the Corporation, up to a maximum

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of 28,013,147 shares of Common Stock (as adjusted for stock splits, stock combinations and similar events) in the aggregate (including all such shares issued or issuable as of the date hereof);

(C) to certain officers, directors or employees of the Corporation pursuant to those certain Restricted Stock Agreements dated as of February 18, 2005, as amended on March 16, 2007, and those certain Restricted Stock Agreements dated on March 16, 2007, between the Corporation and such officers, directors or employees, up to a maximum of 7,611,750 shares of Common Stock (as adjusted for stock splits, stock combinations and similar events) in the aggregate;

(D) as a dividend or distribution on the Preferred Stock or all the shares of capital stock of the Corporation (on an as-converted basis);

(E) for which adjustment of the Conversion Price of the Preferred Stock is made pursuant to subsection (B)4(e);

(F) upon exercise of certain warrants to purchase up to an aggregate of 70,929,114 shares of Common Stock (which amount reflects adjustments made through September 2, 2008 for any stock splits, combinations or similar events or in accordance with any antidilution provisions therein and as may be further adjusted after such date for any stock splits, combinations or similar events or in accordance with any antidilution provisions therein), granted as of or prior to the date hereof; and

(G) pursuant to the Series F Convertible Preferred Stock Purchase Agreement dated on or about September 3, 2008 among the Corporation and the purchasers party thereto.

(2) No Adjustment of Conversion Price: No adjustment in the Conversion Price of any series of Preferred Stock shall be made in respect of the issuance or sale of Additional Common Stock unless the consideration per share (determined pursuant to subsection (B)4(d)(5) hereof) for Additional Common Stock issued or deemed to be issued (pursuant to subsection (B)4(d)(3)) by the Corporation is less than the Conversion Price for such series of Preferred Stock, as the case may be, in effect on the date of, and immediately prior to, such issue or sale.

(3) Deemed Issue of Additional Common Stock. In the event the Corporation at any time or from time to time after the date hereof shall issue or sell any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Common Stock (unless shares of Common Stock issuable pursuant to such Options or Convertible Securities are excluded from the definition of Additional Common Stock by any subpart of subsection (B)4(d)(1)(c)), issued as of the time of such issue or sale or, in case such a

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record date shall have been fixed, as of the close of business on such record date, provided that Additional Common Stock shall not be deemed to have been issued or sold with respect to any particular series of Preferred Stock unless the consideration per share (determined pursuant to subsection (B)4(d)(5) hereof) of such Additional Common Stock would be less than the Conversion Price of the applicable series of Preferred Stock, as the case may be, in effect on the date of and immediately prior to such issue or sale, or such record date, as the case may be, and provided further that in any such case in which Additional Common Stock is deemed to be issued or sold:

(a) no further adjustments in the Conversion Price of the Preferred Stock shall be made upon the subsequent issue of Convertible Securities or Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(b) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof (including any such increase or decrease under or by reason of provisions designed to protect against dilution), the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of a Conversion Price shall affect shares of Common Stock previously issued upon conversion of any shares of Preferred Stock);

(c) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the applicable Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(A) in the case of Convertible Securities or Options for Common Stock, the only Additional Common Stock issued were the Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange (provided, however, that no such adjustment of a Conversion Price shall affect shares of Common Stock previously issued upon conversion of any shares of Preferred Stock);

(B) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for

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the Additional Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to subsection (B)4(d)(5)(b)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised (provided, however, that no such adjustment of a Conversion Price shall affect Common Stock previously issued upon conversion of any shares Preferred Stock);

(d) no readjustment pursuant to clause (b) or (c) above shall have the effect of increasing a Conversion Price to an amount which exceeds the lower of (a) the applicable Conversion Price on the original adjustment date, or (b) the applicable Conversion Price that would have resulted from any issuance of Additional Common Stock between the original adjustment date and such readjustment date; and

(e) in the case of any Options which expire by their terms not more than 90 days after the date of issue thereof, no adjustment of a Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (c) above.

(4) Adjustment of Conversion Price Upon Issuance of Additional Common Stock. In the event the Corporation at any time after the date hereof shall issue or sell Additional Common Stock (including Additional Common Stock deemed to be issued or sold pursuant to subsection (B)4(d)(3) but subject to the exclusions of subsection (B)4(d)(1)(c)) without consideration or for consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue or sale for such series of Preferred Stock, as the case may be, then and in such event each applicable Conversion Price shall be reduced, concurrently with such issue, to a Conversion Price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of shares of Additional Common Stock so issued would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Additional Common Stock so issued; provided that, for the purposes of this subsection (B)4(d)(4), all Common Stock issuable upon conversion of all outstanding Preferred Stock shall be deemed to be outstanding at the time such calculation is made.

(5) Determination of Consideration. For purposes of this subsection (B)4(d), the consideration received by the Corporation for the issue of any Additional Common Stock shall be computed as follows:

(a) Cash and Property. Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation excluding amounts paid or payable for accrued interest or accrued dividends;

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(B) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(C) in the event shares of Additional Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Common Stock deemed to have been issued pursuant to subsection (B)4(d)(3), relating to Options and Convertible Securities, shall be determined by dividing:

(A) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise in full of such Options or the conversion or exchange of all such Convertible Securities, or in the case of Options for Convertible Securities, the exercise in full of such Options for Convertible Securities and the conversion or exchange of all such Convertible Securities, by

(B) the maximum number of shares Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

e. Conversion Price Adjustments for Subdivisions, Combinations or Consolidations of Common Stock.

(1) In the event the Corporation should at any time or from time to time after the date hereof fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional Common Stock (hereinafter referred to as "Common Stock Equivalents"), without payment of any consideration by such holder for the additional Common Stock or the Common Stock Equivalents (including the additional Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be increased in proportion to such increase of outstanding Common Stock and shares issuable with respect to Common Stock Equivalents.

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(2) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price of each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

f. Other Distributions. In the event the Corporation shall declare a distribution payable in securities of other entities or persons, evidences of indebtedness issued by the Corporation or other entities or persons, assets (excluding cash dividends) or options or rights not referred to in subsection (B)4(e)(1), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution or, if no such record date is fixed, as of the date such distribution is made.

g. Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination, merger or sale of assets transaction provided for elsewhere in this Section (B)4, provision shall be made so that the holders of Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Corporation to which a holder of Common Stock would have been entitled on recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section (B)4 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section (B)4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

h. No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section (B)4 and in the taking of all such actions as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

i. No Fractional Stock and Certificate as to Adjustments.

(1) In lieu of any fractional shares to which a holder of Preferred Stock would otherwise be entitled upon conversion, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock, as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

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(2) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of the Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price of the applicable series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Preferred Stock.

j. Notices of Record Date. In the event that the Corporation shall propose at any time: (i) to declare any dividend or distribution upon any class or series of capital stock, whether in cash, property, stock or other securities; (ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; (iii) to merge or consolidate with or into any other corporation, or to sell, lease or convey all or substantially all of its property or business, or to liquidate, dissolve or wind up; then, in connection with each such event, the Corporation shall mail to each holder of Preferred Stock:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend or distribution (and specifying the date on which the holders of the affected class or series of capital stock shall be entitled thereto) or for determining the rights to vote, if any, in respect of the matters referred to in clauses j.(ii) and j.(iii) above; and

(2) in the case of the matters referred to in j.(ii) and j.(iii) above, written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holder in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction (and specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event) and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein.

k. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall be available to the holders of such Preferred Stock, the Corporation shall take such corporate action as may, in the

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opinion of its counsel, be necessary to increase its authorized but unissued Common Stock to such number of shares as shall be sufficient for such purposes.

l. Notices. Any notice required by the provisions of this Section (B)4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, first class postage prepaid, and addressed to each holder of record at his, her or its address appearing on the books of the Corporation.

m. Taxes and Costs. The issue of certificates evidencing Common Stock upon conversion of Preferred Stock in accordance with the terms provided herein shall be made without charge to the holders of such shares for any issue tax in respect thereof or other cost incurred by the Corporation in connection with such conversion; provided, however, the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock so converted.

n. Status of Converted Shares. In the event any shares of Preferred Stock shall be converted pursuant to Section (B)4 hereof, the shares of Preferred Stock so converted shall be canceled and shall not be re-issuable by the Corporation.

o. Special Mandatory Conversion.

(1) Trigger Event. In the event that any holder of shares of Series F Stock, Series E Stock, Series D Stock, Secondary Preferred Stock or Series A Stock, fails to timely elect to participate in each tranche of the Series G Financing (as further described in the Series G Convertible Preferred Stock Purchase Agreement) for such holder's entire Pro Rata Share, or fails to purchase such holder's Pro Rata Share, in the aggregate, in the Series G Financing and within the time period specified by the Corporation, then all of the shares of Preferred Stock held by such holder (other than any Series G Stock purchased by such holder) shall automatically, and without any further action on the part of such holder or the Corporation, be converted into shares of Common Stock using the Conversion Price in effect with respect to such shares of Preferred Stock immediately prior to the first sale of Series G Stock, effective upon and concurrently with, the earlier of (i) such holder's failure to timely elect to participate with respect to their respective entire Pro Rata Share for all Closings (as defined in, and pursuant to, the Series G Convertible Preferred Stock Purchase Agreement) in the Series G Financing or (ii) such holder's failure to purchase their Pro Rata Share at each Closing under the terms of, and pursuant to, the Series G Convertible Preferred Stock Purchase Agreement, when and if such Closing occurs; such conversion is referred to as a "Special Mandatory Conversion." Any accrued and unpaid dividends on any Preferred Stock converted pursuant to a Special Mandatory Conversion shall be forfeited and cancelled upon such Special Mandatory Conversion.

(2) Procedural Requirements. Upon a Special Mandatory Conversion, each holder of shares of Preferred Stock converted pursuant to subsection (B)4(o)(1) shall be sent written notice of such Special Mandatory Conversion and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this subsection. Upon receipt of such notice, each holder of such shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has

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been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to subsection (B)4(o)(1), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate automatically and without any further action on the part of such holder or the Corporation at the time of the Special Mandatory Conversion (notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost certificate affidavit and agreement as applicable), to receive the items provided for in the next sentence of this subsection. As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock so converted, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion valued according to subsection (B)4(i)(1). Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(3) Definitions regarding Special Mandatory Conversion. For the purposes of this to subsection (B)4(o): "Offered Securities" shall mean, with respect to a Closing (as defined in the Series G Convertible Preferred Stock Purchase Agreement), the number of shares of Series G Stock of the Corporation offered by the Corporation for purchase in connection with the Series G Financing; "Pro Rata Share" shall mean, with respect to any holder of Preferred Stock and with respect to each Closing, a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities with respect to such Closing by a fraction, the numerator of which is the total number of issued and outstanding shares of Common Stock and Preferred Stock (other than Series G Stock) held by such stockholder and/or warrant holder, on an as-converted basis assuming the conversion of all Preferred Stock (other than Series G Stock) and the exercise of all options or warrants held by such stockholder and/or warrant holder as of immediately prior to the Lead Purchasers First Closing (as defined in the Series G Convertible Preferred Stock Purchase Agreement), and the denominator of which is the total number of issued and outstanding shares of Common Stock and Preferred Stock (other than Series G Stock) held by all stockholders and warrant holders, on an as-converted basis assuming the conversion of all Preferred Stock (other than Series G Stock) and the exercise of all options or warrants held by such stockholders and warrant holders as of immediately prior to the Lead Purchasers First Closing; "Series G Financing" shall mean the sale of up to 97,366,470 shares of Series G Preferred Stock on or after the date hereof in one or more closings pursuant to the Series G Convertible Preferred Stock Purchase Agreement.

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(4). Antidilution Calculation Upon Special Mandatory Conversion. Notwithstanding anything to the contrary contained in these Articles, any shares of Preferred Stock converted pursuant to a Special Mandatory Conversion shall be converted into shares of Common Stock using the Conversion Price in effect immediately prior to the date hereof using the respective Conversion Prices listed in subsections (B)4(a)(i) – (vi) and without taking into account any adjustments to the Conversion Prices arising from the Series G Financing.

5. [Intentionally Omitted].

6. Voting Rights. In addition to any voting rights required by law and the special voting rights provided in these Articles, the holders of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of shares of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the by-laws of the Corporation, and shall be treated for all purposes (including without limitation the determination of the presence of a quorum), and entitled to vote, together with holders of Common Stock as a single class, with respect to any issue, election, question or matter upon which holders of Common Stock have the right to vote.

7. Protective Provisions.

a. In addition to any other rights provided by law or set forth herein, so long as any shares of Series C Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the outstanding shares of Series C Stock, permit:

(1) the issuance or re-pricing of any options, equity or equity-linked securities (other than as set forth herein);

(2) the issuance of indebtedness for borrowed money in an aggregate amount exceeding 10% of the total revenues of the Corporation in any twelve-month period immediately preceding such borrowing;

(3) the redemption (except for the redemption of the Series C Stock, Series D Stock, Series E Stock, Series F Stock or Series G Stock under the terms hereof, if applicable), repurchase (except for Permitted Repurchases, as defined in the Corporation's then current Amended and Restated Shareholders Agreement, as amended (the "Amended and Restated Shareholders Agreement")) or acquisition of equity or equity-linked securities;

(4) the sale of all or any part of the Corporation, a merger involving the Corporation, the recapitalization of the Corporation or the sale, lease, license or other disposition of the Corporation's assets outside the ordinary course of business;

(5) the dissolution, liquidation or winding up of the Corporation's affairs or the cessation of the Corporation's business operations;

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(6) the acquisition by the Corporation of any business or entity (whether by purchase of stock or assets) for consideration in excess of 10% of the Corporation's last twelve month's revenue at the time of the acquisition;

(7) any expenditures in excess of \$100,000 not otherwise included in the approved annual operating budget;

(8) any changes in the Corporation's accounting methods or policies (except as such changes are required by U.S. generally accepted accounting principles) and any change in the Corporation's auditors;

(9) the pledge of any of the Corporation's assets (except in connection with capital leases) or other financings (except for the pledging of assets in connection with debt financings described in clause (a)(2) above);

(10) amendments to the Corporation's Articles of Incorporation or by-laws;

(11) any sales or other disposition of assets (or, in the event of an acquisition, net assets) exceeding \$100,000;

(12) changes in the strategic direction or lines of business of the Corporation that are not specified in the business plan approved by the Board;

(13) changes to the number of members of the Board of Directors provided for in the Corporation's Amended and Restated Shareholders Agreement;

(14) changes of the Corporation's attorneys and outside accountants;

(15) any action that may impair the Corporation's ability to honor the rights and preferences of the Series C Stock, Series D Stock, Series E Stock or Series F Stock;

(16) any contract or agreement between the Corporation and any officer, director, shareholder or employee of the Corporation, including, without limitation, contracts or agreements for the sale or repurchase of any of the Corporation's outstanding capital stock or rights, warrants or options therefor (except for (A) repurchase rights existing on or prior to the date of this Agreement or (B) any contract or agreement entered into with such person on an arms' length basis);

(17) the declaration or payment of any dividends (except for the 4% dividend payable to the holders of the Series B Stock, Series C Stock, Series D Stock, Series E Stock, Series F Stock and Series G Stock);

(18) the sale or disposition of any of the Corporation's intellectual property;

(19) the grant of any exclusive rights to any of the Corporation's intellectual property or the grant of any exclusive rights to distribute the intellectual property of the Corporation or any products incorporating the intellectual property of the Corporation; and

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(20) any agreement to take any of the foregoing actions.

b. In addition to any other rights provided by law or set forth herein, so long as at least 5,833,333 shares of Series B Stock are outstanding but only until the consummation of an Exempt Transaction (as defined in the Amended and Restated Shareholders Agreement), the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the outstanding shares of Series B Stock, permit:

- (1) amendments to the Corporation's Articles of Incorporation or by-laws;
- (2) the sale of all or any part of the Corporation, a merger involving the Corporation, the recapitalization of the Corporation or the sale, lease, license or other disposition of the Corporation's assets outside the ordinary course of business;
- (3) the issuance of indebtedness for borrowed money in an aggregate amount exceeding 10% of the total revenues of the Corporation in any twelve-month period immediately preceding such borrowing;
- (4) the redemption (except for the redemption of the Series C Stock, Series D Stock, Series E Stock, Series F Stock or Series G Stock under the terms hereof, if applicable), repurchase (except for Permitted Repurchases, as defined in the Amended and Restated Shareholders Agreement) or acquisition of equity or equity-linked securities;
- (5) the declaration or payment of any dividends (except for the 4% dividend payable to the holders of the Series B Stock, Series C Stock, Series D Stock, Series E Stock, Series F Stock and Series G Stock);
- (6) the dissolution, liquidation or winding up of the Corporation's affairs or the cessation of the Corporation's business operations;
- (7) changes to the number of members of the Board of Directors provided for in the Corporation's Amended and Restated Shareholders Agreement;
- (8) any action that may impair the Corporation's ability to honor the rights and preferences of the Series B Stock; and
- (9) any agreement to take any of the foregoing actions.

C. Rights, Preferences, Privileges and Restrictions of Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as follows:

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends and subject to Section 1(b) of Paragraph (B) of this Article V, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends or other distributions as may be declared from time to time by

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the Board of Directors. When and as dividends or other distributions are declared, whether payable in cash, in property or in shares of stock of the Corporation, [other than in shares of Common Stock], the holders of Common Stock shall be entitled (together with the holders of Preferred Stock to the extent provided in Section 1(b) of Paragraph (B) of this Article V, on an as converted basis), to share equally, share for share, in such dividends or other distributions. No dividends or other distributions shall be declared or paid in shares of Common Stock or options, warrants or rights to acquire such stock or securities convertible into or exchangeable for shares of such stock, except dividends or other distributions payable ratably according to the number of shares of Common Stock held by them, in shares of, or options, warrants or rights to acquire, or securities convertible into or exchangeable for, Common Stock.

2. Liquidation Rights. In the event of any Liquidation Event, the assets of the Corporation shall be distributed as provided in Section 2 of Paragraph (B) of this Article V.

3. Voting Rights. Except as otherwise provided in these Articles of Incorporation or required by applicable law, the holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any shareholders' meeting in accordance with the by-laws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

4. Redemption. The shares of Common Stock are not redeemable.

#### ARTICLE VI

A director of this Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for the breach of any fiduciary duty as a director, except in the case of (a) any breach of the director's duty of loyalty to the Corporation or its shareholders, (b) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law or (c) for any transaction from which the director derives an improper personal benefit. Any repeal or modification of this Article by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

#### ARTICLE VII

The Corporation shall, to the fullest extent permitted by law, as the same is now or may hereafter be in effect, indemnify each person (including the heirs, executors, administrators and other personal representatives of such person) against expenses including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with any threatened, pending or completed suit, action or proceeding (whether civil, criminal, administrative or investigative in nature or otherwise) in which such person may be involved by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving any other incorporated or unincorporated enterprise in such capacity at the request of the Corporation.

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ARTICLE VIII

Unless, and except to the extent that, the by-laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE IX

The Corporation expressly elects not to be governed by Section 607.0901 of the Business Corporation Act, relating to affiliated transactions.

THIRD: The foregoing amendment and restatement was duly adopted by the Board of Directors at a special meeting of the Board of Directors on March 10, 2011 in accordance with the applicable provisions of Section 607.0820 and 607.1007 of the Business Corporation Act.

FOURTH: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of (i) the Corporation's Series A Stock, Series B Stock, Series C Stock, Series D Stock, Series E Stock, Series F Stock and Common Stock, respectively, voting together as one class, (ii) the Corporation's Series A Stock, Series B Stock, Series C Stock, Series D Stock, Series E Stock and Series F Stock, respectively, voting together as one class, and (iii) the Corporation's Series B Stock and Series C Stock, respectively, each voting as a separate class, in each case by written consent of the holders of a majority of such class, on March 10, 2011 in accordance with Sections 607.0704 and 607.1004 of the Business Corporation Act and the terms of the Fourth Amended and Restated Articles of Incorporation.

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IN WITNESS WHEREOF, the undersigned has executed this Fifth Amended and Restated Articles of Incorporation on this 11<sup>th</sup> day of March, 2011.

AVISENA, INC.

By: M. Maseda  
Name: Michael Maseda  
Title: President and Chief Executive Officer

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